NAVAJO PREP

Tomorrow's Leaders "Yideeską́ą́góó Naat'áanii"

Received & Inspected

OCT - 1 2010

FCC Mail Room

September 29, 2010

Federal Communications Commission (FCC)
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Re: Letter of Appeal by Applicant – Navajo Preparatory School, Inc.
CC Docket No. 02-6
Funding Request No: 1312950
Billed Entity Number: 99209
Form 471 Application: 475813
FCC Registration No: 0013379201
Date of SLD-USAC Denial Letter: August 04, 2010

Navajo Preparatory School, Inc. (hereafter NPS) is in receipt of the SLD-USAC denial letter dated August 04, 2010 related to the appeal submitted by NPS regarding cost-effectiveness review (Attached as Exhibit "A") NPS respectfully exercises its right to appeal to the Federal Communications Commission (FCC) within the allowable 60-day period from the date of August 4, 2010.

General background information regarding 1st appeal to SLD-USAC:

The first appeal submitted on May 24, 2010 to SLD-USAC was based on the Funding Commitment Adjustment Letter that states: *"After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, it was determined that the funds were erroneously committed for the funding request 1312950, which was not justified as cost effective. The FCC rules require that, in selecting the service provider, the applicant must select the most cost effective service provider or equipment offering, with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals. Additionally, the applicant's technology plans for requested services should be based on an assessment of their reasonable needs. Applicants that request services beyond their reasonable needs and thus not cost effective have violated the above rules. Since FRN 1312950 exceeded the applicant's reasonable needs, this funding commitment is rescinded in full and SLD will seek recovery of any disbursed funds from the applicant."* (Notification Adjustment Letter - Exhibit "B")

Based on the above reasoning, NPS addressed its first appealed to the SLD in three categories: Funds Erroneously Committed, 2. Cost effectiveness in selecting the Service Provider and Equipment Offering, and 3. Technology Plan Goals with Reasonable Needs. In our first appeal to the SLD-USAC, we justified our compliance with all competitive bidding regulations and E-Rate rules and guidelines. We explained that we followed our technology plan, based on our School Master Plan, which outlines and requires the expenditures for which we requested E-rate support, as required. In addition, we provided results of two external audits by KPMG. (This first appeal response to the SLD USAC - Exhibit "C")

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2nd Appeal to the FCC

On August 4, 2010, the SLD-USAC denied our appeal. The Administrator's Decision on Appeal for Funding Year 2005-2006 now states, *"According to our records, on October 9, 2008, you provided documentation in regards to a cost effectiveness review. It was determined based on this documentation that FRN 1312950 was not cost effective because at the funded requested amount, $3,597,648.15, the Cost Per Student is $17,898.75. This amount is considered excessive and not cost effective. Using what the applicant states has been expended to date; $1.77 Million, the Cost per Student is $8,805.97, which is also considered excessive and not cost effective. On appeal, you have failed to provide any evidence that USAC erred in its initial determination. Consequently, the appeal is denied.*"(SLD Administrator's Denial letter on Appeal –Exhibit "A".)

NPS Response to FCC:

NPS is being requested to respond to a different issue of cost effectiveness in this second appeal. USAC's principal evaluation of cost effectiveness occurs during the Program Integrity Assurance (PIA) review. The SLD conducted an evaluation of cost effectiveness for NPS Funding Year 2005-Form 471 Application during the PIA review process on September 8, 2008. NPS responded to numerous questions relating to cost effectiveness of products and services. This PIA review was in line with USAC's definition of cost effectiveness in terms of costs related to **products and services** in the applicant's marketplace. The SLD reviewed and made no further comments on the PIA review and our funding continued since 2008.

We cannot effectively respond to a **method of calculation for cost per student.** Under rulemaking procedures in Administrative law, this information should have been published in the Federal Register for public comment prior to going into effect and should be available to all parties concerned. In any event, this revision to methodology in review of post awards was not in effect at the time of award and should not be applied retroactively to participants adhering to the rules and procedures in effect at the time of award.

We are now asked to justify the matter of cost effectiveness as it applies to a cost per student. We have reviewed all SLD and FCC documentation relating to the E-Rate program, including the Ysleta and fifth order documents which discuss cost effectiveness, as well as the SLD website. We are unable to find a "maximum" per student cost in any of this documentation. All documentations refer to a fair market price for particular goods and services, as well as competitive bidding. Therefore, NPS is unable to respond to the SLD on a standard rate for "per student" formula on which our denial was based. We are, however, able to describe other extenuating circumstances that justify the concern for cost-effectiveness of Year 5 E-Rate funding:

Background Information as it pertains to Extenuating Circumstances:

The Navajo Preparatory School is situated on 83.24 acre property that was once owned by the United Methodist Church upon which the Church operated a Navajo Mission School for nearly 100 years. In 1995, the land and school buildings were purchased by the Navajo Nation to provide a permanent home for the Navajo Preparatory School. With this purchase, the School inherited old school and dormitory buildings that were constructed between the years of 1912 to 1968. It is obviously apparent that the old school buildings were no where near adequate to support the school's progressive college preparatory curriculum, but at that time, Navajo Preparatory School needed a permanent home to operate a school for Native American students.

Between the years of 1995 to the current time, a comprehensive campus revitalization and master plan was developed to restore the campus to a modern educational facility to meet the needs of students in this 21st century. The total cost of this initiative was estimated to be $40,000 million. The master plan was divided into three phases of planning, design and construction to restore the educational facilities to meet modern educational needs. Over a period of ten years (10) between 2000 and 2010, the school was able to provide consistency of quality educational in the midst of moving around while new classrooms were built/renovated and using temporary classrooms during demolition of unsafe buildings. These extenuating circumstances are described below to illustrate the cost-effectiveness concern.

Cost Effectiveness:
In our first appeal to the SLD, we described that Year 5 E-Rate funding was based on the approved NPS Technology Plan which was based on an assessment of the school's reasonable needs. We will further elaborate on this issue:

Size of Construction:
The Year 5 E-Rate funding is applicable to Phase II and Phase III of the NPS Campus Master Plan. Due to the large size of the construction and renovation project, numerous areas that were not permanent had to be tied into the network for ongoing classroom instruction and library use. Providing continuity of educational services was the major goal during the construction/renovation process. The costs for temporary instructional sites should not be included in per student cost as they were never meant to be ongoing instructional areas once the renovation/construction was completed.

Time Span of the Project:
The SLD approved Year 5 funding for several additional funding cycles during the NPS construction project for delivery and installation of non-recurring services. These extensions were approved by the SLD for circumstances that were beyond the control of NPS and the service provider. There were several factors that contributed to the extended length of the construction project:

1. Delays caused by BIA review and approvals of construction documents.
2. Buildings that had to be renovated in accordance with historic preservation guidelines.
3. Unforeseen issues in historic buildings until they were uncovered.
4. Requirements for Historic Buildings Documentation prior to demolition.
5. The original contractor for the renovation of the historic buildings was terminated due to lack of performance and not staying within timelines of the project.
6. Numerous portions of the original contractor's performance in construction were re-worked, replaced or redone.
7. A 100 year rain caused major flooding during construction and delayed progress requiring thousands of dollars of completed work. (Gym flooring replacement alone was over $200,000).
8. Severe winter and inordinately wet weather causing months of delay.

During the extended length of time for construction several of the network components that were actually installed became obsolete. Essentially, components were purchased, installed, and then replaced and installed later during the same funding year due to obsolescence. This duplicated cost due to lengthened time frame should not be included in cost per student as it is essentially the same service.

The attached chart shows in detail an expenditure of work accomplished under Year 5 E-Rate (Exhibit "D"). Chart D clearly shows that 100% of the expenditures are justified.

Conclusion:
As stated in our first appeal to the SLD, NPS has served the public interest of the program with utmost integrity. NPS serves Native American students from the Navajo Nation and other Tribes. Nearly 100% of our students come from very isolated rural communities and do not have access to modern telecommunications and information services in their homes and communities.

We trust that the FCC will review our appeal with fairness. To deny our appeal would impose an extremely unfair hardship on the school and students. NPS recognizes and prides itself on the investments we make in our Native American students and the amazing results we achieve with a student population which is generally underperforming in most other school settings. As an example, NPS has consistently met the Adequate Yearly Progress (AYP) of the No Child Left Behind Act for nine (9) consecutive years since the law was implemented. NPS places 95-100% of its graduates in colleges and universities throughout the country. Our standardized test scores are above the national means. These successes are highly attributed to student access to modern technology. In this respect, USAC, FCC and NPS have served the public interest.

NPS meets the integrity of the E-Rate Program and wishes to move forward. We respectfully request the following:

1. Reconsideration of USAC's decision on their Funding Commitment Adjustment letter to recover $2,514,102.83 for Year 05 – E-Rate funding. Since the contract extension for the service provider expires on September 30, 2010, NPS requests the FCC to approve all disbursed funds to date as all the work performed are legitimate and cost effective.
2. We respectfully request that the SLD pay the outstanding invoices to our service provider. NPS engaged this service provider in good faith, and the provider performed the work based on the Funding Commitment Letter issued to NPS by the SLD. Due to the SLD's non-payment of these two invoices, this provider has suffered extreme hardship and has since had its assets seized and foreclosure is impending.

   The two outstanding invoices are dated 12/21/2009 in the total amount of $318,459.4.

   a. In an effort to relieve some of the burden, NPS has made one payment toward the outstanding invoices to the service provider in the amount of $30,000 (Exhibit E). We request the SLD to reimburse NPS in the amount of $30,000 paid to the service provider for invoices held by SLD.
   b. We request the SLD to pay the service provider the remaining amount of $288,459.41 (Exhibit F)

   Thank you for your consideration of this request.

Sincerely,

Betty Ojaye

Betty Ojaye,
Executive Director

_Exhibit A

USAC **Universal Service Administrative Company**
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

August 04, 2010

Betty Ojaye
Navajo Preparatory School
1220 W Apache St
Farmington, NM 87401-3886

Re: Applicant Name:	NAVAJO PREPARATORY SCHOOL
Billed Entity Number:	99209
Form 471 Application Number:	475813
Funding Request Number(s):	1312950
Your Correspondence Dated:	May 24, 2010

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2005 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s):	1312950
Decision on Appeal:	**Denied**
Explanation:	

- According to our records, on October 9, 2008, you provided documentation in regards to a cost effectiveness review. It was determined based on this documentation that FRN 1312950 was not cost effective because at the funded requested amount, $3,597,648.15, the Cost per Student is $17,898.75. This amount is considered excessive and not cost effective. Using what the applicant states has been expended to date; $1.77 Million, the Cost per Student is $8,805.97, which is also considered excessive and not cost effective. On appeal, you have failed to provide any evidence that USAC erred in its initial determination. Consequently, the appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

— Exhibit B

USAC
Universal Service Administrative Company

Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2005: July 1, 2005 - June 30, 2006

April 12, 2010

Joseph Aragon
NAVAJO PREPARATORY SCHOOL
1220 W APACHE ST,
FARMINGTON, NM 87401 3886

Re: Form 471 Application Number:	**475813**
Funding Year:	**2005**
Applicant's Form Identifier:	**Y-05 Internal**
Billed Entity Number:	**99209**
FCC Registration Number:	**0013379201**
SPIN:	**143026123**
Service Provider Name:	**Fierro Utility Construction Services, Inc.**
Service Provider Contact Person:	**Tara Fierro**

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
•Billed Entity Name,
•Form 471 Application Number,
•Billed Entity Number, and
•FCC Registration Number (FCC RN) from the top of your letter.

3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.

4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.

5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Tara Fierro
Fierro Utility Construction Services, Inc.

Funding Commitment Adjustment Report for
Form 471 Application Number: 475813

Funding Request Number:	1312950
Services Ordered:	INTERNAL CONNECTIONS
SPIN:	143026123
Service Provider Name:	Fierro Utility Construction Services, I
Contract Number:	Y-05-NPS-E-Rate
Billing Account Number:	Navajo
Site Identifier:	99209
Original Funding Commitment:	$3237,883.34
Commitment Adjustment Amount:	$3237,883.34
Adjusted Funding Commitment:	$0.00
Funds Disbursed to Date	$2514,102.83
Funds to be Recovered from Applicant:	$2514,102.83

Funding Commitment Adjustment Explanation:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of a review, it was determined that the funds were erroneously committed for the funding request 1312950, which was not justified as cost effective. The FCC rules require that, in selecting the service provider, the applicant must select the most cost effective service or equipment offering, with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals. Additionally, the applicants technology plans for requested services should be based on an assessment of their reasonable needs. Applicants that request services that are beyond their reasonable needs and thus not cost effective have violated the above rules. Since FRN 1312950 exceeded the applicants reasonable needs, this funding commitment is rescinded in full and SLD will seek recovery of any disbursed funds from the applicant.

Exhibit C

NAVAJO PREP

Tomorrow's Leaders "Yideeskááágóó Naat'áanii"

May 24, 2010

Schools and Libraries Division - Correspondence Unit
100 South Jefferson Road
PO Box 902
Whippany, NJ 07981

Re: Letter of Appeal
Date of Commitment Adjustment Letter: April 12, 2010
FRN: 1312950
Billed Entity Name: Navajo Preparatory School
Form 471Application: 475813
Billed Entity No: 99209
FCC Registration No: 0013379201

Navajo Preparatory School (hereafter NPS) is in receipt of the Universal Service Administrative Company (hereafter USAC), Schools and Libraries Division, (hereafter SLD) Funding Commitment Adjustment Letter dated April 12, 2010. We appeal USAC's decision to rescind funding commitment in full. (Attachment "A" – Funding Commitment Adjustment Letter) Our appeal is addressed in three categories: 1. Funds erroneously committed, 2. Cost Effectiveness, and 3. Technology Plan Goals with Reasonable Needs:

1. *USAC: During the course of a review, it was determined that the funds were erroneously committed for the funding request 1312950, which was not justified as cost effective.*

NPS Response: USAC's opening statement indicates that errors were made in funding by the Schools and Libraries Division (SLD). USAC/SLD approved NPS E-Rate funding on April 4, 2006 for Funding Year 2005 in the amount of $3,237,883.34 (90%). Thereafter, the SLD approved the extension of Year 5 E-Rate funding four (4) times based on circumstances that were beyond NPS and the service provider's control to meet the NPS construction project schedule. SLD granted the extension in accordance with the FCC Report and Order (FCC 01-195). This continuation of Year 5 E-Rate funding is currently in the final stages of completion. USAC's Funding Adjustment letter to rescind the funding commitment in full in the amount of $2,514,102.83, based on erroneously committed funds, is highly unfair and places NPS in an extreme hardship situation when NPS is so close to completing its E-rate project.

NPS is firm in its position that no "errors" were made by either NPS or USAC as indicated in USAC's funding commitment adjustment letter. NPS adhered to all available published guidelines, processes and procedures when applying for and using USAC E-rate funds. If USAC finds it has made errors and "erroneously committed" funding for NPS, it would be unfair and in error to penalize NPS and hold NPS responsible for errors possibly made by the SLD.

We acknowledge that USAC and the FCC have authority to determine compliance with program rules and requirements to ensure program integrity and to detect and deter waste, fraud and abuse. NPS has not compromised program integrity with regard to waste, fraud or abuse in any way.

According to the FCC Report and Order, schools and libraries have been subject to audits to determine compliance because audits may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules applicable during a particular funding year, audits can reveal instances in which universal service funds were improperly disbursed or used in a manner inconsistent with the statute or the Commission's rules (47.C.F.R.§54.516). NPS has been scrutinized in two external audits performed by USAC's independent audit team, KPMG. KPMG performed extensive on-site audits, including a review of funding extensions to subsequent years. The first audit report is dated October 10, 2008 covering Year 5 E-Rate funding. The following statement is cited from the audit report by KPMG:

> "We have examined management's assertions about Navajo Preparatory School's (Beneficiary Number 99209) compliance with the applicable requirements of the Universal Service Fund Schools and Libraries Support Mechanism ("SLSM"), as set forth in 47 C.F.R. Section 54.500 through 54.523 of the Federal Communication's Commission's ("FCC") Rules and Regulations, as amended, and related FCC Orders, relative to disbursement of $549,86 made from the Universal Service Fund during the fiscal year ended June 30, 2007 and relative to its Funding Year 2005 application for funding and service provider selection related to the Funding Request Numbers for which such disbursements were made and have issued our report thereon dated October 10, 2008.

KPMG thoroughly reviewed management's assertions applicable to several FCC Rules and Regulations and specific to Service Provider Selection Matters. There were no inconsistencies, faults, or violations found in the NPS bidding process, nor the evaluation and selection methods NPS employed. There were no findings issued concerning cost effectiveness for the E-rate funding year here referenced. (Attachment "B" - Copy of KPMG Audit Report dated October 10, 2008)

The second extensive audit of NPS E-Rate Year 5 funding was completed by KPMG on June 29, 2009. KPMG'S Audit Report states:

> "We have examined management's assertions, included in the accompanying Report of Management on Compliance with Applicable Requirements of 47 C.F.R. Section 54 of the Federal Communication's Commission's Rules and Regulations and Related Orders, that Navajo Preparatory School (Beneficiary Number 99209) complied in all material respects with the Federal Communications Commission's 47 C.F.R. 54 Rules and related Orders identified in the accompanying Attachment 1 relative to disbursements of $662,043 made from the Universal Service Fund during the fiscal year ended June 30, 2008 and relative to Funding Year 2005, 2006 and 2007 applications for funding and service provider selections relative to the Funding Request Numbers for which such disbursements were made.
>
> "In our opinion, management's assertions that Navajo Preparatory School's complied with the aforementioned requirements relative to disbursements of $662,043 made from the Universal Service Fund during the fiscal year ended June 30, 2008 and relative to its funding year 2005, 2006 and 2007 applications for funding and service provider selections related to the Funding Request Numbers for which such disbursements were made are fairly stated, in all material respects.

In this audit report, there were NO matters Related to Material Non-Compliance. There were three (3) other matters related to Non-Compliance, however, all of them had NO monetary impact. USAC Management Response concurred with the findings of no monetary impact and no recovery is warranted. (Attachment "C" - Copy of KPMG Audit Report dated June 29, 2009 with USAC Management Response, September 4, 2009).

These two independent audit reports and USAC Management Response are in direct contrast to USAC's Funding Commitment Report and Notification of Commitment Adjustment Letter that funds were erroneously committed which was not justified as cost effective.

2. Cost Effectiveness: The second category of our appeal pertains to USAC's funding adjustment explanation which states, *"After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. The FCC rules require that, in selecting the service provider, the applicant must select the most cost effective service or equipment offering, with price being the primary factor, which will result in it being the most effective means of meeting educational needs and technology plan goals."*

NPS Response:

NPS has complied with all USAC guidelines on open and fair competitive bidding with price being the primary factor in the evaluation of bids. This is confirmed by the audit reports discussed in Category #1 above. The bids were published for 28 days on the USAC website, a mandatory meeting and walk-through took place and bid submission deadline was issued.

NPS received three bids for 2005 Funding Year and these were carefully considered based on proposed prices for specific eligible products and services for discounts, including telecommunications services, internet access, and internal connections. The description of needs and services were tailored to meet the specific needs and circumstances of NPS in accordance with the approved technology plan.

The bids were evaluated according to the factors and weights suggested on the USAC web site – Step 4: Construct an Evaluation. Calculations in evaluation were formulated according to the suggested method provided by USAC with price being the primary factor, but not the sole factor. We used other relevant factors such as personnel qualifications, prior experience and references as reasonable basis to help determine cost effectiveness. Of the possible 100 points, NPS gave 50 points to the lowest bidder for eligible goods and services. This is more than the actual USAC guidelines which suggest 30% weight for price as the primary factor. NPS relied even more heavily than suggested on price as a factor than is suggested by USAC guidance. Each bidder provided actual pricing information in accordance with Form 470 that describes the *bona fide* request for services provided by NPS. (Attachment "D" - Form 470 & SLD Attachment 21) This along with the NPS Scoring Matrix (Attachment "E") was submitted to the SLD for Program Integrity Assurance (PIA) review. Subsequently NPS received Form 486 Notification Letter – Receipt of Service Confirmation Form to confirm the information NPS provided.

We gave the lowest bidder the highest weight factor of 50 points. However, the lowest bidder's price was also forty-six (46) times greater than the lowest bidder for project management, installation, configuration, travel, and lodging and per diem. This was attributed to the fact that the lowest bidder's Cisco Certified Network Professional is located in Columbus, Ohio and NPS is located in Farmington, N.M. This provider is too far away from NPS to offer support and training for cost-effective and timely services.

The other two bidders received 43 points on price and they were within 1.1% of each others. Of these two, one bidder did not include a bid for the required extended maintenance on eligible existing hardware and offered no training for network administrator and project management, installation, configuration, travel, lodging and per diem. This bidder also had incorrect totals on their final cost. This particular bidder was not selected. The bidder selected provided copies of vendor certifications, four customer references that were more than 150 miles from the Bidder's home, as preferred by NPS.

Due to discrepancies in the tax calculations of the three bids, NPS compared the bids at base price before taxes in making its decision. NPS was thorough in reviewing the prices of actual services.

NPS has complied with 47 C.F.R §54.511(a) for review of bids in that price need not be the exclusive factor in determining cost-effectiveness, however, so that schools and libraries selecting a provider of eligible services "shall carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers." In the Universal Service Order, the Commission (FCC) stated that "price should be the primary factor in selecting a bid," adding that other factors, particularly "prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives" could "form a reasonable basis on which to evaluate whether an offering is cost-effective." (Universal Service Order, 12 FCC Rcd at 9029-30, para. 481.)

3. Technology Plan Goals with Reasonable Needs: The third category of our appeal pertains to USAC's funding adjustment explanation letter which states, *"Additionally, the applicants technology plans for requested services should be based on an assessment of their reasonable needs. Applicants that request services that are beyond their reasonable needs and thus not cost effective have violated the above rules. Since FRN 1312950 exceeded the applicant's reasonable needs, this funding commitment is rescinded in full and SLD will seek recovery of any disbursed funds from the applicant.*

NPS Response:

The FCC rules state that the applicant is the best entity to determine what technologies are most suited to meet specific educational and technology goals and technology plans are unique to each applicant.

The NPS Technology plan for the E-rate year in question was approved by the Director, Office of Indian Education program, a USAC certified technology plan approver (Attachment "F"). The approval letter states "the Education Technology Plan was reviewed for compliance with FCC requirements as administered by SLD of USAC and NPS is eligible to participate in E-rate, Universal Service Fund Program." With this, approval, NPS proceeded to implement its technology plan with the purpose of effective use of technology to achieve educational goals.

The approved NPS Technology Plan and technology needs assessment at that time was based on a three-phased construction and renovation project covering an 84 acre campus with 20 buildings. The renovation project included historic buildings that required compliance with Historic Preservation Guidelines. None of these historic buildings (built between the years of 1925-1950's with multiple floors) had any type of internal connections. There were many extenuating circumstances in those renovations that inflated the cost, not just costs for internal connections, but the overall construction cost.

The needs assessment for telecommunication services, hardware, software and other services was an enormous undertaking and required ongoing coordination efforts between several authorities and entities. The most important goal in the NPS Technology Plan was to set out a realistic plan to bring information technology and telecommunications infrastructure to achieve the school's college preparatory curriculum and library services.

NPS has successfully met the challenge to provide continuous educational services during the process of upgrading old buildings, demolition of some buildings and construction of new buildings. At the time of application, the request for services and internal connections were for current classrooms that would need to be used for 2 to 3 more years, temporary classrooms while buildings were renovated, temporary relocation of the library and construction of new buildings.

The NPS Master Plan was developed prior to the development of the technology plan. The technology plan was developed according to the needs of that plan (Master Plan). Although some might have believed that the master plan was more than NPS could ever accomplish, plans were underway to acquire funding and start this massive campus reformation. NPS had every intention to carry out the fulfillment of the master plan from the beginning. NPS has acquired funding from the State of New Mexico, the Bureau of Indian Affairs, the Navajo Nation, the E-rate program, other smaller programs, and private donations to accomplish this task. NPS has expended nearly 40 million dollars on construction, demolition, and renovation to realize the master plan. At this point in time, we have nearly completed the master plan for the campus.

NPS needs were many at the time of the application, all of them reasonable, and well justified. This is consistent with USAC's guidelines that the focus of technology planning should be research and planning for technology needs. This is also consistent with USAC's decline to adopt rules to require technology plans to show that the applicant has considered the most cost-effective way to meet its educational objectives (Ysleta Order).

Conclusion:

NPS has served the public interest of the program with utmost integrity. NPS serves Native American students from the Navajo Nation and other Tribes. Nearly 100% of our students come from very isolated rural communities and do not have access to modern telecommunications and information services in their homes and communities.

We trust that the SLD will review our appeal with fairness. To deny our appeal would impose an extremely unfair hardship on the school and students. NPS recognizes and prides itself on the investments we make in our Native American students and the amazing results we achieve with a student population which is generally underperforming in most other school settings. As an example, NPS has consistently met the Adequate Yearly Progress (AYP) of the No Child Left Behind Act for eight (8) consecutive years since the law was implemented in 2002. NPS places 95-100% of its graduates in colleges and universities throughout the country. Our standardized test scores are above the national means. These successes are highly attributed to student access to modern technology. In this respect, USAC and NPS have served the public interest.

NPS meets the integrity of the E-Rate Program and wishes to move forward. We respectfully request reconsideration of USAC's decision on their Funding Commitment Adjustment letter to recover $2,514,102.83 for Year 05 – NPS E-Rate. In addition, we respectfully request that the SLD pay the outstanding invoices to our service provider as soon as possible. NPS engaged this service provider in good faith, and the provider performed the work based on the Funding Commitment Letter issued to NPS by the SLD. The two outstanding invoices are dated 12/21/2009 in the total amount of $318,459.41(Attachment "G"). Thank you for your favorable review of our appeal.

Sincerely,

Betty Ojaye

Betty Ojaye
Executive Director

NAVAJO PREPARATORY SCHOOL

Audit Number: SL-2007-208

BEN Number: 99209

A control deficiency in an entity's internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect noncompliance with a type of compliance requirement of a federal program on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to comply with federal program requirements, such that there is more than a remote likelihood that noncompliance with a type of compliance requirement of a federal program that is more than inconsequential will not be prevented or detected by the entity's internal control. We consider the deficiencies in internal control over compliance described in items SL2007BE208_F01 and SL2007BE208_F02 in Attachment 2 to be significant deficiencies.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that material noncompliance with a type of compliance requirement of a federal program will not be prevented or detected by the entity's internal control. We did not consider any of the deficiencies described in Attachment 2 to be material weaknesses.

Navajo Preparatory School's responses to the findings identified in our examination are described in Attachment 2. We did not examine Navajo Preparatory School's responses, and accordingly, we express no opinion on it them.

However, in accordance with *Government Auditing Standards*, we noted other matters that we have reported to the management of Navajo Preparatory School in a separate letter dated October 10, 2008.

KPMG LLP

October 10, 2008

Federal Communications Commission's (FCC's) 47 C.F.R. Part 54 Rules and Related Orders with which Compliance was Examined, continued

Service Provider Selection Matters:

Section 54.504 (a), which was effective as of February 12, 1998

Section 54.504 (b) (4), which was effective as of January 1, 1999

Section 54.511 (a), as revised, which was originally effective as of July 17, 1997

FCC Order 03-313, paragraphs 39 and 56, which was issued on December 8, 2003

FCC Order 00-167, paragraph 10, which was issued on May 23, 2000

Receipt of Services and Reimbursement Matters:

Section 54.500 (b), which was effective as of July 21, 2003

Section 54.504, which was effective as of July 17, 1997

Section 54.504 (b) (2) (ii), which was effective from February 12, 1998 through October 12, 2004

Section 54.504 (b) (2) (iii), which was effective from July 17, 1997 through October 12, 2004

Section 54.504 (b) (2) (v), which was effective from July 17, 1997 through March 10, 2004

Section 54.504 (b) (2) (v), which was effective as of October 13, 2004

Section 54.504 (c) (1) (vii), which was effective as of October 13, 2004

Section 54.504 (g), which was effective as of March 11, 2004

Section 54.505 (a), which was effective as of July 17, 1997

Section 54.513 (c), which was effective as of March 11, 2004

Section 54.514 (b), as revised, which was originally effective as of July 21, 2003

Section 54.523, which was effective as of March 11, 2004

FCC Order 03-313, paragraph 60, which was issued on December 8, 2003

FCC Order 04-190, paragraph 24, which was issued on August 13, 2004

Schedule of Findings, continued
(presented in accordance with the standards applicable to attestation engagements contained in *Government Auditing Standards*)

Beneficiary Response	The Beneficiary's Internet Safety Policy will be updated and approved by the Board of Trustees by March 30, 2008 to include FCC Rule Section 54.520 (c) (1) (ii). It is noted that the Beneficiary had a filtering system in place during the funding year.
Finding No.	**SL2007BE208_F02**
Condition	The Beneficiary did not receive reimbursement from one of its service providers for telecommunication purchases funded through Funding Request Number 1312413 for which the school had paid full price to the service provider, Alltel. The Universal Service Administrative Company remitted the discounted portion to Alltel in the amount of $3,715 on November 6, 2006.
Criteria	FCC Rule Section 54.514 (b) states: "Deadline for remittance of reimbursement checks. Service providers that receive discount reimbursement checks from the Administrator after having received full payment from the billed entity must remit the discount amount to the billed entity no later than 20 business days after receiving the reimbursement check."
Cause	Based on discussions with the Beneficiary's management, there was confusion and miscommunication with the service provider, Alltel, about whether they had received the reimbursement as a credit or not, even though the Beneficiary had requested the reimbursement in cash. In addition, there was a lack of controls to identify outstanding service provider reimbursement timely.
Effect	There is no monetary effect with respect to the Beneficiary as a result of this finding since it had not violated any FCC Rule.
Recommendation	KPMG recommends that the Beneficiary implement controls to identify outstanding service provider reimbursements on a more timely basis and to collect the $3,715 from AllTel Communications immediately.
Beneficiary Response	The Beneficiary received a credit on our ALLTEL bill for February 2007 for the correct amount, but the credit was subsequently debited back into the bill in August 2007. The Beneficiary has been in discussion with the service provider and received assurance that a check will be issued and the processing of the payment will be expedited.

Assertions – School / School District

NOTE: The checkbox before each assertion indicates whether that assertion is applicable.

The *School* represents the following assertions per the FCC Rules and Regulations, as amended, and related FCC Orders (which are indicated as "applicable" and are identified herein with each assertion) with respect to disbursements made from the Universal Service Fund during the year ended June 30, 2007 on our behalf and the related Funding Year 2005 applications for funding and service provider selections related to the FRNs for which such disbursements were made:

A. Record Keeping – The School:

1. ☐ maintained for its purchases of telecommunications and other supported services at discounted rates the kind of procurement records that it maintains for other purchases. (Section 54.516 (a) which was effective from July 17, 1997 through October 12, 2004)

2. ☒ retained all documents, to date, related to the application for, receipt, and delivery of discounted telecommunications and other supported services. Also, any other document that demonstrated compliance with the statutory or regulatory requirements for the schools and libraries mechanism was retained. (Sections 54.516 (a) (1) and 54.504 (c) (1) (x) which were effective as of October 13, 2004 and require a five-year retention period for such documents)

3. ☒ maintained, to date, asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment. (Section 54.516 (a) which was applicable from March 11, 2004 to October 12, 2004 and Section 54.516 (a) (1) which was effective as of October 13, 2004, both of which require maintenance of such records for a period of five years after purchase)

B. Application Matters – The School:

1. ☒ requested discounts from the Universal Service Fund for telecommunications and other supported services only for schools that meet the statutory definition of elementary and secondary schools found under section 254(h) of the Communications Act of 1934, as amended in the No Child Left Behind Act of 2001, 20 U.S.C. 7801(18) and (38), do not operate as for-profit businesses, and do not have endowments exceeding $50 million. (Section 54.504 (b) (2) (i) which was effective as of October 13, 2004 and superseded Section 54.504 (b) (2) (i) which was effective as of February 12, 1998; as well as Section 54.501 (b), as revised, which was originally effective as of July 17, 1997)

2. ☒ submitted a completed FCC Form 470, including the required certifications, signed by the person authorized to order telecommunications and other supported services. (Section 54.504 (b) (2), as revised, which was originally effective as of July 17, 1997)

3. ☒ had the resources required to make use of the services requested, or such resources were budgeted for purchase for the current, next or other future academic years, at the time the FCC Form 470 was filed. (Section 54.504 (b) (1), as revised, which was originally effective as of July 17, 1997; and Section 54.504 (b) (2) (vi) which was

Assertions – School / School District

11. ☒ submitted a certification on FCC Form 486 that an Internet safety policy is being enforced and complied with the certification such that: (Section 54.520 (c) which was effective as of April 20, 2001)

    a) it enforced a policy of Internet safety that includes monitoring the online activities of minors and the operation of a technology protection measure, with respect to any of its computers with Internet access, that protects against access through such computers to visual depictions that are obscene, child pornography or harmful to minors (Section 54.520 (c) (1) (i) which was effective as of April 20, 2001); and

    b) its Internet safety policy addresses each of the following (Section 54.520 (c) (1) (ii) which was effective as of April 20, 2001):

        i) access by minors to inappropriate matter on the Internet and World Wide Web;

        ii) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

        iii) unauthorized access, including so-called 'hacking', and other unlawful activities by minors online;

        iv) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and

        v) measures designed to restrict minors' access to materials harmful to minors.

C. Service Provider Selection Matters – The School:

1. ☒ made a request for competitive bids for all eligible goods and/or services for which Universal Service Fund support was requested and complied with applicable state and local procurement processes included in its documented policies and procedures. (Section 54.504 (a) which was effective as of February 12, 1997, with clarification included in FCC Order 03-313, paragraphs 39 and 56, which was issued December 8, 2003 and was effective for Funding Year 2005)

2. ☒ waited at least four weeks after the posting date of the FCC Form 470 on the USAC Schools and Libraries website before making commitments with the selected service providers. (Section 54.504 (b) (4) which was effective as of January 1, 1999)

3. ☒ considered all bids submitted and selected the most cost-effective service offering, with price being the primary factor considered. (Section 54.511 (a) which was effective as of July 21, 2003)

4. ☐ considered all bids submitted and selected the most cost-effective service offering. (Section 54.511 (a) which was effective from July 17, 1997 through July 20, 2003)

5. ☒ did not surrender control of its competitive bidding process to a service provider that participated in that bidding process and did not include service provider contact

discount. (Section 54.504, which was effective as of July 17, 1997, with confirmation of earlier administrative practices included in FCC Order 03-313, paragraph 60, which was issued on December 8, 2003, and codified in Section 54.504 (g) which was effective as of March 11, 2004)

8. ☒ deducted from the pre-discount cost of services, indicated in funding requests, the value of all price reductions, promotional offers and "free" products or services. (Section 54.504 which was effective as of July 17, 1997, with confirmation of earlier administrative practices included in FCC Order 03-313, paragraph 60, that confirmed earlier administrative practices, which was issued on December 8, 2003, and codified in Section 54.523 which was effective as of March 11, 2004)

October 10, 2008

Betty Ojaye, Superintendent of Schools
Navajo Preparatory School

Shirley Crawley, Chief Financial Officer
Navajo Preparatory School

Joseph Aragon, E-Rate Coordinator
Navajo Preparatory School

KPMG LLP
2001 M Street, NW
Washington, DC 20036

Navajo Preparatory School
1220 W Apache Street
Farmington, NM 87401

October 10, 2008

Ladies and Gentlemen:

We have examined management's assertions about Navajo Preparatory School's (Beneficiary Number 99209) compliance with the applicable requirements of the Universal Service Fund Schools and Libraries Support Mechanism ("SLSM"), as set forth in 47 C.F.R. Section 54.500 through 54.523 of the Federal Communications Commission's ("FCC") Rules and Regulations, as amended, and related FCC Orders, relative to disbursements of $549,861 made from the Universal Service Fund during the fiscal year ended June 30, 2007 and relative to its Funding Year 2005 application for funding and service provider selection related to the Funding Request Numbers for which such disbursements were made and have issued our report thereon dated October 10, 2008. In planning and performing our examination, we considered internal control in order to determine our examination procedures for the purpose of expressing our opinion on management's assertions. An examination does not include examining the effectiveness of internal control and does not provide assurance on internal control. We have not considered internal control since the date of our report.

During our examination we noted certain matters involving internal control and matters related to immaterial noncompliance with SLSM requirements that are presented for your consideration. These comments and recommendations, all of which have been discussed with the appropriate members of management, are intended to improve internal control or result in improved compliance with SLSM requirements and are summarized as follows:

Comment No. **SL2007BE208_C01**

Condition Internal connections equipment funded through FRN 1312950 was stored in four locations that were subject to overheating. The internal connections equipment located in Dodge, McDonald, and Morgan Halls, as well as the gymnasium, did not have properly operating air conditioning and ventilation systems, which has resulted in the room temperature to be in excess of a reasonable temperature for equipment to operate.

Criteria National Institute of Standards and Technology (NIST) Special Publication 800-53, minimum security controls states that the organization regularly maintains, within acceptable levels, and monitors the temperature and humidity within the facility where the information system resides.

Recommendation KPMG recommends that the Beneficiary improve its existing controls by requiring a more thorough supervisory review of all information included on FCC Form 471.

Beneficiary Response The Beneficiary provides assurance to improve its existing internal controls for more thorough review of the FCC Form 471. The thorough review will be conducted by the Business Manager to ensure accurate discount calculations and accuracy and consistency of data used.

* * * * *

Our examination procedures are designed primarily to enable us to form an opinion on management's assertions about with the applicable requirements of the SLSM, and therefore may not bring to light all weaknesses in policies or procedures that may exist. We aim, however, to use our knowledge of your organization gained during our work to make comments and suggestions that we hope will be useful to you.

We would be pleased to discuss our comments and recommendations with you at any time.

This report is intended solely for the information and use of the Beneficiary's management, and others within the organization, Universal Service Administrative Company and the FCC, and is not intended to be and should not be used by anyone other than these specified parties.

Very truly yours,

KPMG LLP

Finding Number: SL2007BE208 C01

Finding/Comment Narrative:

Internal connections equipment funded through FRN 1312950 was stored in four locations that were subject to overheating. The internal connections equipment located in Dodge, McDonald, and Morgan Halls, as well as the gymnasium, did not have properly operating air conditioning and ventilation systems, which has resulted in the room temperature to be in excess of a reasonable temperature for equipment to operate.

Management Comment:

USAC will contact the Beneficiary to confirm that the air conditioning is functioning in the locations identified. USAC management concurs with this comment and recommendation.

Finding Number: SL2007BE208 C02

Finding/Comment Narrative:

The Beneficiary has been approved by the US Department of Agriculture to have met the requirements of Provision 2 of the National School Lunch Act. As allowed by USAC, the Beneficiary used an Alternative Discount Mechanism to arrive at its discount amount on FCC Form 471. In our review of FCC Form 471, KPMG noted the following deficiencies: The Beneficiary did not mark "Alternative Discount Mechanism Used" on the FCC Form 471, despite using the USAC-approved Provision 2 method for calculating the discount percentage.;

Management Comment:

Going forward, the Beneficiary should follow Form 471 instructions and consult USAC's website for guidance on how to properly calculate discount percentages. USAC management agrees with the comment, effect and recommendation.

This concludes the USAC management response to the audit.